

Crowell
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Jury instructions given

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Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

FILED

NOV 18 2014

George Thomas M. Durkin
United States District Court

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true.

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

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Certain maps of the neighborhood where the incident occurred have been shown to you. Those maps are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts.

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Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

You have heard recordings that have been received in evidence. These recordings were proper evidence and you may consider them, just as any other evidence.

You were given transcripts to use as a guide to help you follow as you listen to the recordings. The transcripts are not evidence of what was actually said or who said it. It is up to you to decide whether the transcripts correctly reflected what was said and who said it. If you notice any difference between what you heard on the recordings and what you read in the transcripts, you must rely on what you heard, not what you read. And if after careful listening, you could not hear or understand certain parts of the recordings, you must ignore the transcripts as far as those parts are concerned.

During this trial, I have asked a witness a question myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

I have a duty to caution or warn an attorney who does something that I believe is not in keeping with the rules of evidence or procedure. You are not to draw any inference against the side whom I may caution or warn during the trial.

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In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

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You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this "inference." A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- and the reasonableness of the witness's testimony in light of all the evidence in the case.

You may consider statements given by a witness under oath before trial as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his testimony.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement not under oath that is inconsistent with his testimony here in court, you may consider the earlier statement or conduct only in deciding whether his testimony here in court was true and what weight to give to his testimony here in court.

In considering a prior inconsistent statement or conduct, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

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You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such persons have given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witnesses' qualifications, and all of the other evidence in the case.

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It is proper for a lawyer to meet with any witness in preparation for trial.

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In this case one of the defendants is a Chicago police officer and one of the defendants is a former Chicago police officer and the plaintiffs are private citizens.

All parties are equal before the law. All parties are entitled to the same fair consideration.

Defendants are being sued as individuals. Neither the City of Chicago police department nor the City of Chicago is a party to this lawsuit.

When I say a particular party must prove something by "a preponderance of the evidence," or when I use the expression "if you find," or "if you decide," this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

Plaintiffs bring the following claims in this case:

First, Plaintiffs, Bernice Branch and Kenneth Crowell allege that Defendant Donald Branch used excessive force against them in violation of the United States Constitution.

Second, Plaintiffs, Bernice Branch and Kenneth Crowell allege that Defendant Officer Anton White failed to intervene and stop the use of excessive force in violation of the United States Constitution.

You must give separate consideration to each claim and each party in this case.

Although there are two defendants, Donald Branch and Anton White, it does not follow that if one is liable the other is too.

Although there are two plaintiffs, Bernice Branch and Kenneth Crowell, it does not follow that if one is successful, the other is too.

In this case, Plaintiff Bernice Branch claims that Defendant Donald Branch used excessive force against her. To succeed on this claim, Plaintiff Bernice Branch must prove each of the following things by a preponderance of the evidence:

1. Defendant Donald Branch used unreasonable force against Plaintiff Bernice Branch;
2. Because of Defendant Donald Branch's unreasonable force, Plaintiff Bernice Branch was harmed; and
3. Defendant Donald Branch acted under color of law.

If you find that Plaintiff Bernice Branch has proved each of these things by a preponderance of the evidence, then you should find in her favor, and go on to consider the question of damages.

If, on the other hand, you find that Plaintiff Bernice Branch did not prove any one of these things by a preponderance of the evidence, then you should find for Defendant Donald Branch, and you will not consider the question of damages.

In this case, Plaintiff Kenneth Crowell claims that Defendant Donald Branch used excessive force against him. To succeed on this claim, Plaintiff Kenneth Crowell must prove each of the following things by a preponderance of the evidence:

1. Defendant Donald Branch used unreasonable force against Plaintiff Kenneth Crowell;
2. Because of Defendant Donald Branch's unreasonable force, Plaintiff Kenneth Crowell was harmed; and
3. Defendant Donald Branch acted under color of law.

If you find that Plaintiff Kenneth Crowell has proved each of these things by a preponderance of the evidence, then you should find in his favor, and go on to consider the question of damages.

If, on the other hand, you find that Plaintiff Kenneth Crowell did not prove any one of these things by a preponderance of the evidence, then you should find for Defendant Donald Branch, and you will not consider the question of damages.

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When I say that a person acts "under color of law," I mean that a person uses or misuses authority that he has because of his official position.

You must decide whether Defendant Donald Branch's use of force was unreasonable from the perspective of a reasonable officer facing the same circumstances that Defendant Donald Branch faced. You must make this decision based on what Defendant Donald Branch knew at the time of his actions, not based on what you know now. In deciding whether Defendant Donald Branch's use of force was unreasonable, you must not consider whether his intentions were good or bad.

In performing his job, an officer can use force that is reasonably necessary under the circumstances.

Plaintiff Bernice Branch must prove by a preponderance of the evidence that Defendant Anton White was personally involved in the conduct that Plaintiff Bernice Branch complains about. You may not hold Defendant Anton White liable for what other police officers did or did not do.

However, to succeed on her failure to intervene claim, Plaintiff Bernice Branch must prove each of the following things by a preponderance of the evidence:

1. Defendant Donald Branch used excessive force on Plaintiff Bernice Branch;
2. Defendant Anton White knew that Defendant Donald Branch was about to use excessive force on Plaintiff Bernice Branch;
3. Defendant Anton White had a realistic opportunity to do something to prevent harm from occurring;
4. Defendant Anton White failed to take reasonable steps to prevent harm from occurring;
5. Defendant Anton White's failure to act caused Plaintiff Bernice Branch to suffer harm.
6. Defendant Donald Branch acted under color of law.

If you find that Plaintiff Bernice Branch has proved each of these things by a preponderance of the evidence, then you should find for Plaintiff Bernice Branch, and go on to consider the question of damages.

If, on the other hand, you find that Plaintiff Bernice Branch has failed to prove any one of these things by a preponderance of the evidence, then you should find for Defendant Anton White, and you will not consider the question of damages as to Defendant Anton White.

Plaintiff Kenneth Crowell must prove by a preponderance of the evidence that Defendant Anton White was personally involved in the conduct that Plaintiff Kenneth Crowell complains about. You may not hold Defendant Anton White liable for what other police officers did or did not do.

However, to succeed on his failure to intervene claim, Plaintiff Kenneth Crowell must prove each of the following things by a preponderance of the evidence:

1. Defendant Donald Branch used excessive force on Plaintiff Kenneth Crowell;
2. Defendant Anton White knew that Defendant Donald Branch was about to use excessive force on Plaintiff Kenneth Crowell;
3. Defendant Anton White had a realistic opportunity to do something to prevent harm from occurring;
4. Defendant Anton White failed to take reasonable steps to prevent harm from occurring;
5. Defendant Anton White's failure to act caused Plaintiff Kenneth Crowell to suffer harm.
6. Defendant Donald Branch acted under color of law.

If you find that Plaintiff Kenneth Crowell has proved each of these things by a preponderance of the evidence, then you should find for Plaintiff Kenneth Crowell, and go on to consider the question of damages.

If, on the other hand, you find that Plaintiff Kenneth Crowell has failed to prove any one of these things by a preponderance of the evidence, then you should find for Defendant Anton White, and you will not consider the question of damages as to Defendant Anton White.

If you decide for any of the Defendants on the question of liability, then you should not consider the question of damages for that Defendant.

If you find that a Plaintiff has proved his or her claim against any of the Defendants, then you must determine what amount of damages, if any, that Plaintiff is entitled to recover from that Defendant.

If you find that a Plaintiff has failed to prove his or her claim, then you will not consider the question of damages as to that Plaintiff.

If you find in favor of Plaintiff Bernice Branch, then you must determine the amount of money that will fairly compensate her for any injury that you find she sustained as a direct result of any excessive force and/or failure to intervene.

Plaintiff Bernice Branch must prove her damages by a preponderance of the evidence. Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that damages are restricted to the actual loss of money; damages include both the physical and mental aspects of injury, even if they are not easy to measure.

You should consider the following types of damages, and no others:

The physical and mental/emotional pain and suffering that Plaintiff Bernice Branch has experienced. No evidence of the dollar value of physical or mental/emotional pain and suffering and loss of a normal life has been or needs to be introduced. There is no exact standard for setting the damages to be awarded on account of pain and suffering. You are to determine an amount that will fairly compensate the Plaintiff Bernice Branch for the injury she has sustained.

If you find in favor of Plaintiff Kenneth Crowell, then you must determine the amount of money that will fairly compensate him for any injury that you find he sustained and/or is reasonably certain to sustain in the future as a direct result of any excessive force and/or failure to intervene.

Plaintiff Kenneth Crowell must prove his damages by a preponderance of the evidence. Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that damages are restricted to the actual loss of money; damages include both the physical and mental aspects of injury, even if they are not easy to measure.

You should consider the following types of damages, and no others:

The physical and mental/emotional pain and suffering and loss of a normal life that Plaintiff Kenneth Crowell has experienced. No evidence of the dollar value of physical or mental/emotional pain and suffering and loss of a normal life has been or needs to be introduced. There is no exact standard for setting the damages to be awarded on account of pain and suffering. You are to determine an amount that will fairly compensate Plaintiff Kenneth Crowell for the injury he has sustained.

When I use the expression "loss of a normal life", I mean the temporary or permanent diminished ability to enjoy life. This includes a person's inability to pursue the pleasurable aspects of life.

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

[Forms of verdict read.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdicts, your presiding juror will fill in and date the appropriate forms, and all of you will sign them.

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

If you do communicate with me, you should not indicate in your note what your numerical division is, if any.

The verdicts must represent the considered judgment of each juror. Your verdicts, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.